

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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| LARRY ALLEN SLEDGE, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 1: 22-CV-11 |
| |) | |
| THREE UNKNOWN OFFICERS OF |) | |
| THE CITY OF ERIE POLICE |) | |
| DEPARTMENT, et al, |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM ORDER

This action was received by the Clerk of Court on January 10, 2022, and was referred to United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

The operative pleading is the Second Amended Complaint. ECF No. 24. Plaintiff alleges that City of Erie police officers Allison, Pilarski, Barber, and Russell, along with Assistant District Attorney Hillary Hoffman, violated his constitutional rights by subjecting him to a false arrest and malicious prosecution. He further alleges that three unknown City police officers used excessive force while interrogating him in jail. Finally, he seeks relief against the City of Erie and Mayor Joe Schember pursuant to *Monell v. Department of Social Services*, 436 U.S. 658 (1978) for failing to properly train and supervise the City's police force. Plaintiff seeks monetary damages and injunctive relief pursuant to 42 U.S.C. § 1983.

Defendants filed a motion to dismiss the Second Amended Complaint. ECF No. 26. Plaintiff filed an opposition brief. ECF No. 29. Both parties filed a reply. ECF No. 30; ECF No. 31.

On May 8, 2023, Magistrate Judge Lanzillo issued a Report and Recommendation recommending:

- 1) The dismissal of Plaintiff's due process and conspiracy claims with prejudice;
- 2) The dismissal of Plaintiff's false arrest and malicious prosecution claims without prejudice to his right to reassert those claims in a separate action if his underlying criminal conviction is ever overturned;
- 3) The dismissal of Plaintiff's excessive force and Monell claims, without prejudice and allowing him a final opportunity to amend those claims within an appropriate time following the adoption of the Report and Recommendation; and
- 4) The termination of Defendants Pilarski, Allison, Barber, Russell, and Hoffman from this action with prejudice.

ECF No. 33.

Despite being given the time and opportunity to do so, Plaintiff did not file any objections to the Report and Recommendation. Instead, Plaintiff filed what purports to be an amended complaint. ECF No. 34. This purported Third Amended Complaint is premature and lacks specificity.

“If a party objects timely to a magistrate judge's report and recommendation, the district court must ‘make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.’” *EEOC v. City of Long Branch*, 866

F.3d 93, 99 (3d Cir. 2017) *quoting* 28 U.S.C. § 636(b)(1). Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Local Rule 72(D)(2).

After *de novo* review of the Second Amended Complaint, the motion to dismiss and associated filings, together with the report and recommendation thereto, the following order is entered:

AND NOW, this 14th day of June, 2023;

IT IS ORDERED that the motion to dismiss the Second Amended Complaint [ECF No. 26] is granted, to wit:

- The due process and conspiracy claims are dismissed with prejudice;
- The false arrest and malicious prosecution claims are dismissed without prejudice to Plaintiff's right to reassert them in a separate action if his underlying criminal conviction is ever overturned;
- His excessive force and *Monell* claims are dismissed without prejudice; and
- His claims against Defendant Hillary Hoffman are dismissed pursuant to 28 U.S.C. § 1915(e).

IT IS FURTHER ORDERED that the report and recommendation of Magistrate Judge Lanzillo, issued on May 8, 2023 [ECF No. 33] is adopted as the opinion of the court. The Clerk of Court is hereby directed to terminate Defendants Pilarski, Allison, Barber, Russell, and Hoffman from the docket.

FINALLY, IT IS ORDERED that Plaintiff may file an amended complaint within twenty days of this Order. The amended complaint must be limited to his excessive force and *Monell* claims and consistent with the instructions of the Report and Recommendation. *See* ECF No. 33, page 21 n.10. (“Sledge is strongly encouraged to be as specific as possible about the particulars of the excessive force incident.”).

/s/ Susan Paradise Baxter
SUSAN PARADISE BAXTER
United States District Judge